

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF AUGUST
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE MRS JUSTICE T.MEENA KUMARI
and
THE HON'BLE MR JUSTICE G.CHANDRAIAH

WRIT PETITION NO : 17277 of 2007

Between:

Syed Ameerullah S/o.Azizullah

R/o.11-2-396, Ahmed Manzil, Habeebnagar, Nampally, Hyderabad

.....
PETITIONER

AND

1 Government of AP., rep. by its Secretary, Finance(Admn.II)
Department, AP Secretariat, Hyderabad

2 The Commissioner and Director of Insurance, Insurance
Department, Government of AP., Tilak Road, Hyderabad

.....**RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or a direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in not fixing the pension and in not paying the arrears of pension and also the orders of the AP Administrative Tribunal passed in OA.No.1554 of 2007 dated 26.7.2007 in not passing any orders for payment of pensionary arrears and fixing of pension as being illegal, arbitrary and unreasonable and issue a consequential direction directing the respondents to fix the pension and pay the arrears of pension.

Counsel for the Petitioner: B.VEERAAIAH

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following :

**THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and**

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 17277 of 2007

ORDER: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed challenging the order dated 26.7.2007 passed by the A.P. Administrative Tribunal in O.A. No. 1554 of 2007.

The petitioner herein filed O.A. No. 1554 of 2007 before the Tribunal seeking to declare the proceedings of the 1st respondent dated 21.12.2006 and consequential proceedings of the 2nd respondent dated 6.1.2007 as illegal and arbitrary. Having considered the matter, the Tribunal dismissed the said O.A., holding that the said proceedings do not suffer from any infirmity. Hence, this writ petition.

Heard the learned counsel for the parties and perused the material available on record.

It is contended by the learned counsel for the petitioner that the petitioner fell sick due to arthritis since 1977 and he applied for leave from 13.8.1977 and on 29.1.1981 he submitted medical invalidation certificate issued by the Civil Surgeon requesting the respondents to settle his pension and other

retirement benefits, but the respondents have not passed any order on such request nor did communicate any letter to the petitioner – applicant but on the other hand treated the period of absence from 6.3.1978 to 30.6.2001 as dies non. The contention of the learned counsel for the petitioner is that the 2nd respondent has no jurisdiction to treat the period of absence as dies non and the Tribunal having directed the 2nd respondent to settle FBF, GPF and APLIF due to the petitioner, failed to pass any orders with regard to pension and therefore the order of the Tribunal in not passing any orders with regard to pension is illegal and arbitrary.

On the other hand, it is contended by the learned Government Pleader for Services I that the Tribunal has properly considered the material available on record and having regard to the fact that the petitioner was absent from duty unauthorisedly for 22 years, the Tribunal rightly held that the petitioner is not entitled for medical invalidation pension and therefore the writ petition is liable to be dismissed.

A perusal of the material available on record discloses that the petitioner was sick since 1977 and in the year 1981 he made an application with a request to accept his resignation and permit him to retire on medical invalidation with effect from 28.1.1981. As the medical invalidation certificate submitted by the petitioner – applicant was found defective, it was sent to the residential address

of the petitioner but the petitioner failed to attend to the said defects. It is further seen that the Government considered the representation filed by the petitioner – applicant and vide Memo No. 2607/285/A2/Admn.II/2006 dated 21.12.2006 passed orders that the petitioner – applicant is not entitled for any leave for the period of his unauthorized absence as per Rules as the period of unauthorized absence has to be treated as Dies Non as per FR-18 read with the executive instructions issued there under. The petitioner was absent from duty unauthorisedly for more than a period of 22 years. After a gap of 22 years, for the first time he made a representation on 5.1.2004 to accept his retirement on medical grounds. The 1st respondent through proceedings dated 21.12.2006 considered the said representation and rejected the same on the ground that the petitioner absconded from duty since March, 1978 unauthorisedly without disclosing his whereabouts. Having regard to the fact that the petitioner – applicant was unauthorisedly absent from duty for more than a period of 22 years and the order dated 21.12.2006 was passed by the competent authority, the Tribunal rightly held that the petitioner – applicant is not entitled for medical invalidation pension while directing the 2nd respondent to settle FBF, GPF and APLJF due to the petitioner. We find no error or infirmity in the order passed by the Tribunal warranting interference of this Court.

There is no merit in this writ petition. It is accordingly

dismissed.

T. MEENA KUMARI, J.

G. CHANDRAIAH, J.

Date: 14-08-2007.

Note:
Issue C.Cs., within a week.
(BO)
MVB.